

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

T.A.NO. 19 of 2015

Cuttack this the 12TH day of December, 2017

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sashikant Singh, aged about 20 years, S/o. late Krishankant Singh, Qr.No.H/80, Sector-1, Rourkela-769 008, Dist-Sundargarh

...Petitioner

By the Advocate(s)-M/s.A.Deo,
J.Ray,
A.Dash
N.R.Routray

-VERSUS-

1. Steel Authority of India, represented by its Chairman, ISPAT Bhawan, New Delhi-100 011.
2. Chief Executive Officer, Rourkela Steel Plant, Rourkela-769 011, Dist-Sundargarh.

...Opposite Parties

By the Advocate(s)-Mr.H.M.Dhal

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the son of one late Krishnakant Singh, who was working at the Rourkela Steel Plant and died in harness on 16.4.2013 due to cardiorespiratory failure. After the death of his father, the applicant made a representation dated 18.7.2013 to the Chief Executive Officer, Rourkela Steel Plant (Respondent No.2) requesting for compassionate appointment and sent a reminder on 6.9.2013. The applicant had also filed a Writ Petition © No.24681 of 2013 in the Hon'ble High Court of Orissa, which disposed of the same on

14.02.2014 with a direction to the Opposite Parties to consider the representation of the applicant in view of the circular dated 30.8.2011, within six weeks from the date of receipt of the judgment. Respondent No.2 passed an order on 4.4.2014 rejecting the prayer of the applicant on the ground that the applicant's father expired while undergoing treatment and before the Committee declared him medically invalid and therefore, the applicant's case was not coming under the purview of the Personnel Policy Circular No.1007 dated 31.8.2011. Aggrieved by this, the applicant filed another Writ Petition © No.15776 of 2014 before the Hon'ble High Court of Orissa, which was disposed of vide order dated 8.5.2015 with a direction to transfer the matter to this Tribunal since by virtue of the notification issued by the Central Government, the Steel Authority of India, Rourkela Steel Plant became amenable to the jurisdiction of the CAT. Therefore, this T.A. is taken up for adjudication.

2. In the Writ Petition before the Hon'ble High Court, the applicant had prayed for the following.

“The petitioner, therefore, most respectfully prays that your Lordships may be graciously pleased to admit the writ petition and issue a RULE NISI calling upon the Opp. Parties to show cause as to why the order passed under Annexure-12 shall not be quashed and on their failing to show cause or showing insufficient cause, issue a writ of Certiorari quashing the order under Annexure-12 and issue a writ of mandamus directing the Opp. Parties to appoint the petitioner on compassionate ground in a suitable post,

make the Rule absolute and allow the writ petition with cost;

And pass such other order/orders as your Lordships deemed just & Proper in the facts and circumstances of this case”.

3. Applicant has based his prayer mainly on the ground that the Personnel Policy Circular No.1007 dated 30.8.2011 provides for relief/benefit to the dependent family members of the employees in cases of death, permanent/total disablement and medical invalidation. The procedure prescribed in the said circular is as follows:

“PROCEDURE”

The dependent family member shall have to apply in the prescribed Proforma for seeking compassionate appointment.

If the application has been made for providing compassionate employment to a dependent member other than the widow, the same shall be accompanied by an affidavit from the widow about his/her nomination.

An application for compassionate appointment on medical ground shall be considered based on recommendation of the Committee constituted in this regard. The committee may meet as per requirement but not later than three months of receipt of an application. The applicant may also be granted personal hearing by the committee, if necessary, for better appreciation of the facts of the case.

Once the request for providing compassionate employment has been accepted by the competent authority, the appointment shall be processed as per the prevailing recruitment rules”.

4. In case of applicant’s father, he was under treatment having suffered from cancer since 14.3.2013. The application

for compassionate appointment to the applicant was made on medical ground on 8.4.2013 and it was well within the knowledge of the authorities that the applicant's father was suffering from cancer and therefore, his application should have been recommended at the earliest following the procedure laid down in the Circular No.1007, the Committee should have met as per requirement, i.e., immediately on the next day, to recommend the case of the applicant for giving employment on medical ground. But the authorities did not follow the procedure and therefore violated the Circular No.1007 dated 30.8.2011. One of the Members of the Committee, viz., the Director of Ispat General Hospital was well aware of the medical conditions of the applicant's father and should have taken action to consider the application well in time before the applicant's father expired on 16.4.2013. The applicant alleges that in case of one Rabindra Sahu, the respondents considered his case for compassionate appointment within eight days of the date of application for medical invalidation. Similarly, they have also considered the case of one Potnur Sudhakar on the same day as the date of application. Had the authorities taken similar prompt action in case of the father of the applicant knowing fully well that he was suffering from cancer, the applicant would have got a job on compassionate ground. Therefore, the action of the

respondents is illegal and a violation of the guidelines governing the field.

5. The applicant had filed a Misc. Application No.230/2016 for amendment on 30.3.2016 proposing amendment to Paragraph-17 of the O.A. by incorporating the circumstances in which the application for compassionate appointment submitted by the applicant's father was not considered in time. He also alleged in the petition for amendment that the authorities have not constituted the Committee immediately with mala fide intention and violated the guidelines governing the claim. Records show that this Misc. Application was allowed on 17.5.2016.

6. The respondents have filed their reply on 1.8.2016 in which they have denied the averments made by the applicant in the O.A. It is their contention that the representation of the applicant was considered keeping the guidelines under circular dated 30.8.2011 in view and it was found that the applicant is not eligible for the benefit under the circular and the same was rejected by a speaking order. The application dated 9.4.2013 submitted by the father of the applicant seeking medical invalidation and employment to his son (applicant in the present T.A.) was immediately processed to be placed before the Committee as per rules and there was no delay in considering the same. However, the applicant's father expired within one week of submission of application.

7. The applicant filed a rejoinder on 31.8.2016 and reiterated that the application made by his father was not considered as per the guidelines laid down in the Personnel Policy Circular No.1007 dated 30.8.2011. The authorities have violated the guidelines laid down in the Circular and disposed of the representation filed by the applicant in a hurried manner. The application should have been processed immediately on the next day itself since similarly situated employees, viz. Rabindra Sahu and P.Sudhakar have been considered quite fast. The applicant has also cited the case of one Mr.M.K.Agarwal whose case was considered within four days. Therefore, the applicant's father has been subjected to discrimination. The applicant has also cited the decision of the Hon'ble Supreme Court in Balbir Kaur & Another vs. Steel Authority of India Ltd. & Ors. (AIR 2000 SC 1596) in which it has been held that the introduction of family benefits Scheme cannot be a ground to refuse the benefit of compassionate appointment and the family benefits Scheme cannot be in any way equated with the benefit of compassionate appointment.

8. The matter was heard on 30.11.2017 and reserved for orders. During the course of arguments, the learned counsel for the respondents cited the judgment of the Hon'ble Apex Court in LIC of India Ltd. vs. Asha Ramachandra Ambekar 1994(2) SCC 718 in which Their Lordships have held that High Court/Administrative Tribunals cannot confer benediction

impelled by a sympathetic consideration. The Court should endeavor to find out whether the particular case in which sympathetic considerations are to be weighed falls within the scope of law.

9. The fact that the applicant's father was under treatment for the serious ailment of cancer is not disputed. He had been referred twice for specialized treatment at Kolkata. Fearing his impending death, applicant's father had submitted an application on 9.4.2013 for compassionate appointment for his son, but unfortunately, he passed away on 16.4.2013, exactly one week after the submission of application. The guidelines regarding compassionate appointment are enumerated in the Circular No.1007 dated 30.11.2008. The provision of the policy shows that its objective is to provide relief as under:

"COVERAGE:

The Guidelines shall cover specifically two types of Compassionate cases which are as below:

In case of death or permanent total disablement due to accident 'arising out of and in course of employment' as per NJCS agreement.

In case of an employee declared incapable to perform his normal duty by the Committee constituted for this purpose, due to his/her physical/mental incapacity due to suffering from chronic debilitating diseases.

The cases of "death in harness" shall not be covered under the guidelines for dealing with appointment on compassionate cases".

10. I have also considered the case law cited by the applicant and the respondents. The subject of compassionate appointment has been dealt with by the Hon'ble Supreme Court in a catena of judgments [Haryana SEB vs. Naresh Tanswar (1996) 8 SCC 23, Santosh Kumar Dubey v. State of UP, (2009) 6 SCC 481, Haryana SEB vs. Krishna Devi (2002) 10 SCC 246, State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412 and National Hydroelectric Power Corporation vs. Nanak Chand (2004) 12 SCC 487]. In **State Bank of India vs. Anju Jain (2008) 8 SCC 475**, the Hon'ble Supreme Court had pertinently observed the following.

“Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment”.

In the present O.A. although it is admitted that the applicant cannot claim compassionate appointment as a matter of right, he has been an unfortunate victim of adverse circumstances where his father died within a short period of one week after submitting the application for medical invalidation. Viewed in the present context of the above guidelines, the case of the father of the applicant was one of natural death. His application for compassionate appointment for his son could have been considered if the Committee had met to declare him medically invalid. The Committee is given the deadline of three months to deal with cases of this nature. It is unfortunate that the applicant's father expired within one week of submission of the application.

11. The applicant's contention that his father's application should have been considered on the next day itself is not legally sustainable. He has cited some instances where prompt action had been taken with regard to wards of some other applicants for employment assistance on compassionate grounds. However, nobody could have foreseen the unfortunate demise of the applicant's father within such a short period. It will not be justifiable to impute any mala fide intention or discrimination just , because the application of the applicant's father was not considered within a week of its submission. The action of the Respondent No.2 in rejecting the representation of

the applicant although unfortunate, is as per rules and no illegality can be found in that.

12. In view of the above, the O.A. filed by the applicant cannot stand the scrutiny of law and is therefore, dismissed. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

BKS